

# United States District Court Southern District of Texas

Case Number: H-04-2387

## ATTACHMENT

Description:

☐ State Court Record ☐ State Court Record Continued

☐ Administrative Record

☐ Document continued - Part II of IV

☒ Exhibit(s) number(s) / letter(s) Exh. # 106

Other: to Pltff's Amended Pet. Habeas Corpus

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1 wanted to try to identify or determine. So fairly shortly after  
2 that study I began to have contact with people who worked in  
3 real prisons, occasionally was asked to come and give talks  
4 to -- to groups of people, sheriff's departments and so on, got  
5 involved in training officers who worked in jail settings,  
6 consulted for boards of supervisors on jail construction and  
7 design and so on. And then began to actually study prison  
8 systems, people in prisons and prison systems and so have a  
9 continued academic interest in that. But never again did an  
10 experiment on the topic from -- really from that point on, all  
11 of my knowledge and work with respect to prison environments and  
12 prison behavior comes out of observations of -- of actual  
13 institutions, comes out of interviews with correctional  
14 officials and -- and many, many prisoners, both people who are  
15 actually confined in prison, people who've been in prison and  
16 have -- have since come out.

17 Q. Can you indicate in some way how much time you have spent  
18 in prisons and how much opportunity you've had to observe the

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19 actual workings of prisons in the prison itself?

20 A. Well, it's difficult to quantify it. I mean, I've

21 certainly looked at many, many maximum security prisons in

22 states across the country and some foreign countries as well.

23 Most of my work focuses on adult medium and/or maximum security

24 prisons, although from time to time I also look at -- I've

25 looked at jail conditions and the way in which people adapt in

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1 jail environments.

2 I've mentioned earlier also that I study the social  
3 and institutional histories of people who are accused or  
4 convicted of violent crime, and oftentimes that has taken me  
5 into these institutions in a somewhat different way to look at  
6 how an individual goes through a series of institutional  
7 experiences and how they're changed or shaped by those  
8 experiences.

9 So in one context or another, I am probably in a jail  
10 or a prison, you know, every month in some capacity. I don't  
11 and have not worked in such institutions, but I have studied  
12 them pretty consistently for the last 25 or so years.

13 Q. Can you name the states that come to mind where you've had  
14 some significant exposure to one or more of the prison  
15 institutions of the state system?

16 A. Washington, Oregon, extensive exposure to maximum security  
17 prisons and medium security prisons in California, the state of  
18 New Mexico, again, fairly extensive experience, particularly in

19 the 1980s, New Jersey, Arkansas, Alabama, some of the  
20 correctional institutions in Ohio, Pennsylvania, a number of  
21 different states, including the state of Texas, actually, also  
22 in the 1980s, as you well know.

23 Q. Let's talk about the time that you have spent in TDCJ  
24 prisons. When did you first come to a prison in the State of  
25 Texas system?

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1 A. 1982, '83, '84, I came a number of times, touring a variety  
2 of adult male prisons in Texas, a couple of times separately to  
3 the Ellis Unit where the condemned row inmates are kept, but  
4 more visits actually in conjunction with this litigation or this  
5 case and, indeed, in response to contacts by you.

6 Q. Did you -- were you doing work as a potential expert  
7 witness in participating in discovery in the Texas system by  
8 site visits leading up to the hearing that actually didn't  
9 happen about crowding in 1985?

10 A. Yes. Yes. You asked me to visit a number of prisons and  
11 to begin to evaluate the issue of the effects of crowding in a  
12 sample of prisons in Texas, and I did that, and it involved a  
13 series of trips made. As I recall, it was 1983.

14 Q. And what did you do on those site visits back in the mid  
15 '80s?

16 A. I toured -- typically toured the particular institutions,  
17 spent some time in orientations with staff members, getting an  
18 overview of the institution. And then I typically would draw a

19 random sample of inmates from an inmate roster and conduct  
20 interviews with them on a variety of issues pertaining to  
21 overall conditions of confinement, how they were being affected  
22 by those conditions, any particular problem areas that they --  
23 that were -- concerned them. And there were, you know, a  
24 separate set of issues that we -- that we had developed  
25 beforehand that I typically addressed in these interviews.

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1 I also would typically make a point of walking through  
2 some of the housing units or the cellblock areas and talking to  
3 people cellside to get an impression of how they were reacting  
4 to the environments in which they were being housed.

5 Q. When was your next trip to Texas after somewhere around  
6 1983 and '84 to come to a TDCJ institution?

7 A. In December of 1998, just a few months ago.

8 Q. Where did you go in December of 1998?

9 A. I visited Eastham, Beto, and the high security unit at  
10 Estelle.

11 Q. And that was at my request as a part of the expert  
12 discovery in the case?

13 A. Yes, it was.

14 Q. What did you do at each of the Eastham, Beto, and Estelle  
15 units, if you can address them as a group?

16 A. Well, I actually followed more or less the same procedure  
17 that I had followed earlier, and it's a fairly standard  
18 procedure that I try to follow when I'm trying to understand how



19 a prison system works or how a particular institution works and  
20 how people who are confined in it are being affected by that.

21       So I would typically attend an initial orientation. I  
22 should say also that I was also oftentimes in the presence of  
23 other people, other experts who were there for a slightly  
24 different purpose, so we typically had a medical doctor and a  
25 psychiatrist with us. You were present at these visits.

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1 And the visits typically commenced with an orientation  
2 by the staff, sometimes the warden, sometimes an associate  
3 warden, and several members of his or her staff who would give  
4 us an overview of the institution. They typically also provided  
5 us with some documentation about the number of prisoners who  
6 were confined there, where they were confined, and so on, what  
7 kind of units they were running.

8 Typically it would give us a kind of a snapshot or an  
9 overview of what was going on at the institution, answer some  
10 questions, and then we would each go to our respective areas  
11 within the institution.

12 For me, that typically meant getting the inmate  
13 roster, the roster of all of the prisoners who were in the  
14 institution, and then from that roster I would randomly select a  
15 sample of people who I would ask to have brought to me for  
16 interviews, and then the interviews would typically proceed.

17 Q. Let me interrupt you for a minute. When you designated the  
18 people to be brought for interviews, did you write the names of

19 those individuals down on a form that was provided by somebody  
20 who was working for the Texas Department of Criminal Justice?  
21 A. Yes, always. They gave -- they gave me a form. I filled  
22 out the form. They would then -- they would -- and the form  
23 would contain information that I had taken off of the official  
24 housing roster. So I would write the prisoner's name, his TDCJ  
25 number, and also the housing assignment that was contained on

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1 the roster, so that the staff could go and get the person and  
2 bring them.

3 Q. And did the individuals who were responsible for arranging  
4 the interviews that you requested retain a copy of the document  
5 you gave them listing the names and numbers of the inmates?

6 A. Yes, always. What will typically happen is, I would make  
7 out the list. They would -- they would run a copy of it off.  
8 They would have that copy. They would keep the copy, and that's  
9 the copy that they worked from as they -- as they -- as they  
10 found and brought prisoners to me for the interviews.

11 Q. And then you had interviews with the prisoners?

12 A. Yes.

13 Q. Approximately how long did your interviews last?

14 A. Well, they varied in length. I think they probably  
15 averaged around 45 minutes, but that's a rough average. Some --  
16 as you know, some -- like people in general, prisoners -- some  
17 are more talkative than others, and so sometimes the interviews  
18 were more brief in nature, and sometimes they were longer. But

19 I think the average was probably about a half hour or 45

20 minutes.

21 Q. Did you have a particular methodology for the interviews?

22 A. Yes, I did. I typically began by asking them some

23 background questions to get a sense of who they were, how long

24 they had been in the system, whether they had been in the system

25 before. So I took a very brief and general institutional

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1 history.

2       And then I asked them directly about their treatment,  
3 about how things were going for them in the prison, and whether  
4 there were areas about their incarceration at this particular  
5 institution that were good, they felt were positive things, and  
6 areas of concern, where they -- were there problem areas, if  
7 any.

8       I also then had a fairly standard series of questions  
9 which I posed to each one of them directed at the issue of  
10 psychological effects of stress and some of the kinds of  
11 psychopathological reactions that people sometimes have to  
12 incarceration. So I posed in the same order a series of  
13 questions to them about how they personally were reacting to  
14 the -- to the conditions of confinement.

15 Q. Did you do anything else in the course of your site visits  
16 besides what you've described so far, which has been an  
17 orientation meeting and interviews of prisoners selected from a  
18 roster?

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19 A. Yes.

20 Q. And what else did you do?

21 A. I went on a tour of the institution. When we went on the

22 tour, it would typically vary, and it would be a function of

23 when the staff members had the time to take us on the tour, when

24 there was a break in the interviewing schedule, and so on.

25 We would take an orientation to the unit itself,

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1 looking at housing where prisoners recreated, in some instances  
2 where they worked. We would typically visit the infirmary area.  
3 And then I would make a point of walking through a number of  
4 cellblocks.

5 Q. Did you spend -- did you spend more time in any one kind of  
6 cellblock versus any other kind of cellblock?

7 A. Yes. You had asked me to look particularly at conditions  
8 of confinement in the ad seg units, and so I made a point of  
9 looking inside those units with more frequency or more reliably  
10 than I did in the other units.

11 I entered -- always made a point of entering several  
12 of the ad seg cellblocks. And in addition to walking through  
13 them, I would also typically spend a considerable amount of time  
14 in there talking cellside with a sample of prisoners who would  
15 typically come to the -- to the doors of their cells and who  
16 were -- who were oftentimes eager to talk.

17 Q. Did you have occasion to talk with any staff in the course  
18 of your site visits?

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19 A. Yes, always, in the course of -- certainly in the course of  
20 the orientation, but actually more frequently in the course of  
21 just the day-to-day activities in each one of the prisons so  
22 that there would be -- there was time when there were escort  
23 officers around of whom I would ask questions.

24 And when we would -- when we would go on the tours,  
25 the officers who took us on the tours and the officers who we

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1 would encounter as we entered different units or different areas  
2 of the prison were oftentimes quite open to talking about what  
3 was going on. I would certainly also talk with officers in the  
4 ad seg units that I toured.

5 Q. So you didn't do any interviews of staff. But you had  
6 occasion in the course of being on the unit to have the  
7 cooperation of staff and being shown around, and you had some  
8 conversations, some questions answered?

9 A. Yes. I thought that the staff was accommodating and  
10 friendly and typically responsive to questions.

11 Q. How many days did you spend at each of the units you went  
12 to?

13 A. At Eastham and Beto, two days each. And at the Estelle  
14 high security unit, one day.

15 Q. Let's focus first on the area that I had asked you  
16 particularly to focus on, the conditions in administrative  
17 segregation in the institutions that you went to. And first let  
18 me ask you: Did you have occasion to review any institutional

19 documents pertaining to administrative segregation as well as to  
20 the site visit that you described?

21 A. Yes, I did. I reviewed a considerable number of documents  
22 that you sent me. But among them were various statistical  
23 reports that described the numbers of people incarcerated in the  
24 TDCJ over time, and the particular places where they were  
25 incarcerated. You also sent me two ad seg plans, including the

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1 most recent one, which I have dated 1998.

2 I also reviewed a report that was done by the National  
3 Council of Crime and Delinquency, which evaluated the  
4 administrative segregation policy in Texas and made a series of  
5 recommendations about changes in their policy.

6 Q. When you looked at administrative segregation in TDCJ, did  
7 you come from a background of some experience in that kind of  
8 housing unit?

9 A. Yes. I have evaluated and examined and toured and  
10 inspected many administrative segregation or solitary  
11 confinement or security housing units, and in a sense have  
12 become particularly interested in this issue because of the use  
13 of long-term administrative segregation, which is a growing  
14 issue in the United States and one which I have become  
15 increasingly interested in, and had an increasing number of  
16 observations and contacts with different systems with respect to  
17 the conditions that are created and maintained inside these  
18 particular kinds of units.

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19 Q. What are the effects -- or what are the particular  
20 conditions that are special about administrative segregation  
21 that are what you look at when you look at the effects of  
22 long-term administrative segregation on people?  
23 A. Well, obviously, administrative segregation segregates or  
24 separates, people from the rest of the mainline population. And  
25 then administrative segregation conditions vary in terms of the

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1 extent of additional deprivations that prisoners who are in  
2 these units incur, and also the length of time over which they  
3 incur these additional deprivations. So you look at the -- as  
4 you -- as you would in examining any set of conditions of  
5 confinement, the overall atmosphere inside the unit.

6       The physical conditions that are created are  
7 particularly important here, because it is often the case that  
8 in administrative segregation units, prisoners spend a  
9 considerable period of time in the housing unit itself, unlike  
10 prisoners who are in mainline, or general, population, where the  
11 place where they sleep is a place where they don't necessarily  
12 spend very much additional time.

13       For people who are in administrative segregation, the  
14 atmosphere, the physical conditions, are acutely important  
15 because they spend so much time there and have their activities  
16 constricted in terms of their ability to do anything else.

17       And that's another area that you examine, what  
18 activities are available for people who are in these housing

19 units, to what extent do they have opportunities for social  
20 interaction, to what extent do they have opportunities to do any  
21 kind of meaningful activity, whether that's recreation,  
22 educational activity, work, and so on, and you examine how they  
23 fill their day, what kinds of access they have to things in  
24 their cell.  
25 Assuming that they are restricted in terms of their

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1 ability to leave their cells and restricted in terms of their  
2 ability to interact with others, what kind of provision is made  
3 for them while they're in their cell and living the predominance  
4 of their life confined to this relatively small space.

5       You look also at recreation areas, the extent to which  
6 they have access to those areas, procedures that are used for  
7 taking them out of their cells, mobility within the unit, do  
8 they -- if they're confined to the unit, do they have an  
9 opportunity to get out of their cell but still be retained in  
10 the unit, visitation of the -- the total range of activity that  
11 people are permitted inside an ad seg unit.

12 Q. From the psychological perspective, is some amount of  
13 social interaction a basic human necessity?

14 A. Absolutely.

15 Q. And what about meaningful intellectual activity?

16 A. Meaningful intellectual activity is also important.

17 Activity of any kind is important, particularly when you're  
18 talking about people who can be confined in these kinds of units



19 for a long period of time.

20 Q. What about physical exercise?

21 A. Also important.

22 Q. How many different systems have you been in where you have

23 seen administrative segregation conditions?

24 A. Probably 20 or 30 different prisons.

25 Q. And can you name some of the more notable super maxes or

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1 administrative segregation units you've visited?

2 A. The federal penitentiary in Marion, Illinois; the super max

3 or security housing unit at Pelican Bay are the -- are the two

4 super max prisons that I've -- that I've evaluated.

5 Q. And what about systems with -- is there a sort of level of

6 administrative segregation that's less max than a super max?

7 A. Sure. In most -- virtually all adult prison systems of

8 which I'm aware have some kind of administrative segregation or

9 solitary confinement or punitive segregation units wherein ,

10 people are housed for some period of time.

11 What's different about super max, so-called super max

12 prisons, is that they are set up to house people for long

13 periods of time in administrative segregation, and that's a

14 relatively new phenomena in American corrections. And it's --

15 it's one where the issue of the actual conditions of

16 confinement, I think, is all the more important, because these

17 are places that are set up to -- with the expectation that

18 people will spend a considerable period of time there, not like

19 solitary confinement as practiced in the -- in earlier times in  
20 American corrections where people would go for just brief  
21 periods of time. Super maxes are set up as places where people  
22 stay oftentimes for many months and many years.  
23 Q. So a super max can be something like an extended, almost  
24 solitary confinement sort of situation?  
25 A. It can be, and for some prisoners, it is.

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1 Q. When we talk about conditions in administrative segregation  
2 in the prisons that you've seen here, should we separate Estelle  
3 high security from Beto Unit and Eastham, or should we talk  
4 about them all together?

5 A. Well, we probably should do both. They have similarities.  
6 The general regime of administrative segregation in all three  
7 places is similar.

8 Q. Is that the regime that's in large part described by the  
9 administrative segregation plan that you reviewed?

10 A. Yes. But the actual physical conditions and structure in  
11 the institutions are different. Eastham and Beto are an  
12 administrative segregation unit of one type, of an older type,  
13 which I have some familiarity with in other institutions, and  
14 the Estelle high security unit is a more modern, smaller super  
15 max type design.

16 Q. Do you remember approximately how many prisoners were in  
17 each of the segregation units you visited, Eastham, Beto, and  
18 Estelle high security?

19 A. I don't remember specifically. There were several hundred,  
20 certainly, in each one of these places.

21 Q. And what are the salient differences between the older type  
22 of administrative segregation in Eastham and Beto and the newer  
23 type in Estelle high security?

24 A. Well, the older type involved basically converted  
25 cellblocks, and they -- they are in prisons that are themselves

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1 older prisons. And so the administrative segregation units are  
2 larger. They're stacked tiers. The cell doors open out onto  
3 the tier itself. And as I said, there are several levels to it.  
4 They tend to be more difficult to keep clean. They tend to be  
5 more difficult to keep noise level reduced in. The general  
6 environment is oftentimes one of some disrepair. They are --  
7 they tend to be very noisy places, even under the best of  
8 circumstances, and they're oftentimes dirty and dank. And these  
9 units were like ones I've seen elsewhere in all of those  
10 respects.

11 Q. You're speaking now of the older ones?

12 A. The older ones.

13 Q. And then what makes Estelle high security different?

14 A. Well, it's a -- these are smaller confined units. The  
15 organization of the cellblocks themselves are very different, so  
16 that the cells are arranged, instead of -- instead of stacked  
17 tiers, like large cellblocks in typically older maximum security  
18 prisons, one on top of another, the units themselves have an

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19 interior design so that there are typically two rows of cells  
20 that run alongside of both sides of the -- of the unit or the  
21 cellblock, and they're typically -- in Estelle high security, in  
22 any event, there were only two of the -- of these tiers, rather  
23 than three. The -- they tend also to have closed doors and --  
24 Q. So it would be solid doors instead of open bar fronts?  
25 A. Yes, exactly.

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1 Q. Or even open bar fronts with Plexiglas?

2 A. That's correct. And in theory, they are -- they are easier  
3 places to maintain, easier places to keep clean. They are  
4 obviously also newer, and so the design is one in which allows  
5 for better lighting, it allows for easier hygiene or sanitation  
6 in the unit itself, and so on.

7 Q. Is there a difference in social isolation between the two  
8 kinds of units?

9 A. There is, and I think perhaps an unintended consequence,  
10 but a consequence nonetheless. Part of what makes the older  
11 units noisier is also part of what makes the isolation in the  
12 units themselves a little bit less severe or drastic. That is  
13 to say, people can talk or shout outside of their cells because  
14 they're open bars typically on the -- on the outside of the cell  
15 itself. It's what makes them noisier, but it also allows for at  
16 least a degree of very strained, but communication nonetheless.

17 In the Estelle high security unit, that's not  
18 possible. The doors are solid, and the communication patterns

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19 are almost completely constricted or constrained. It's very  
20 difficult for people to communicate with any ease up and down --  
21 up and down the cellblock or across the cellblock. The  
22 isolation is much more dramatic and seemingly psychologically  
23 severe.

24 Q. Were you informed during your site visits and from some of  
25 the documentation that you reviewed that there -- the Estelle

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1 high security unit is the first of several to be brought

2 on-line?

3 A. Yes.

4 Q. What were your observations about administrative

5 segregation as you observed it at the Eastham, Beto, and Estelle

6 high security units?

7 A. My observation was that particularly, and primarily in

8 Levels 2 and 3, these were potentially psychologically very

9 destructive units in which, in my opinion, high numbers of

10 prisoners were living in psychological distress and pain; that

11 there is in these units a high risk of psychological harm for

12 people -- particularly for people who are being confined there

13 for periods of longer than a year, and that they -- all three of

14 the units, despite the difference in architecture between them,

15 are, in my opinion, extremely problematic in terms of long-term

16 housing units because of the -- of the mix of psychological

17 issues that are created there, including the fact that there

18 appear to be people who are housed there who are manifesting

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19 signs and symptoms of some form of psychological disorder.

20 Q. Now, counsel for the AG's office was correct, wasn't he,

21 that it's not your business to diagnose and treat seriously

22 mentally ill people; is that correct?

23 A. That's absolutely correct. And I am not purporting to

24 render a diagnosis here at all, but rather simply to talk about

25 observations of what were obviously and dramatically disturbed

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1 forms of behavior.

2 Q. And from the perspective of maybe a better psychologically  
3 educated layperson than most of the rest of us, can you describe  
4 what you observed that is the basis for your saying from your  
5 perspective that there were people who seemed to be extremely  
6 psychologically disturbed?

7 A. Yes, I can. I'm talking about forms of behavior that are  
8 easily recognizable and that are stark in nature when you see  
9 them, when you look at them, when you're exposed to them. In a  
10 number of instances, there were people who had smeared  
11 themselves with feces. In other instances, there were people  
12 who had urinated in their cells, and the urination was on the  
13 floor. And in the case of the -- of the open cellblock areas in  
14 Eastham and Beto, the urine was spilling out onto the walkway in  
15 the units themselves.

16 There were many people who were incoherent when I  
17 attempted to talk to them, babbling, sometimes shrieking; other  
18 people who appeared to be full of fury and anger and rage and

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19 were, in some instances, banging their hands on the side of the  
20 wall and yelling and screaming; other people who appeared to be  
21 simply disheveled, withdrawn, and out of contact with the --  
22 with the circumstances or surroundings. Some of them would  
23 be -- would be huddled in the back corner of the -- of the cell  
24 and appeared incommunicative when I attempted to speak with  
25 them.

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1        Again, these were not subtle diagnostic issues. These  
2 were people who appeared to be in profound states of distress  
3 and pain.

4 Q. You actually happened to be on a tour with Dr. Dennis  
5 Jurczak, a psychiatrist, is that correct, at the Eastham and  
6 Beto Units?

7 A. Yes, he was -- he was with us on both cases.

8 Q. And did you get any information from him about his  
9 observations of actual psychiatric illness in the units that you  
10 had visited?

11 A. Yes. He and I talked at some length in the course of these  
12 visits. And on occasion, I would identify somebody who I  
13 thought was severely disturbed and would refer that person to  
14 him. And in other instances, we simply talked about our -- both  
15 of our observations about the numbers of people in these units  
16 who appeared to be in psychological pain. In some instances,  
17 there were people who he was able to diagnose as schizophrenic.  
18 That's his diagnostic expertise, not mine.

19 But it certainly came as no surprise to me that they  
20 were diagnosably mentally disturbed, because the extreme and  
21 obvious nature of their disorder was apparent to me, as it was  
22 to him.  
23 Q. How did the conditions and deprivations in administrative  
24 segregation in the TDCJ units you visited compare to what you're  
25 familiar with in other institutions around the country?

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1 A. They were as bad or worse as any I've ever seen. The level  
2 of deprivation in these units in terms of what people are  
3 allowed to have and allowed to do is rock bottom. The  
4 conditions in the atmosphere that I saw at the high security  
5 unit at Estelle was, I believe, the worst I've ever seen. The  
6 experience I had in that unit in walking out onto the cellblocks  
7 was unlike any I have ever had in any institution that I've --  
8 that I've entered.

9 Q. What made it special?

10 A. The -- the bedlam which ensued each time I walked out into  
11 one of those units; the number of people who were screaming, who  
12 were begging for help, for attention; the number of people who  
13 appeared to be disturbed; the existence, again, of people who  
14 were smeared with feces; the intensity of -- of the noise as  
15 people began to shout and ask, Please come over here. Please  
16 talk to me. Please help me. It was -- it was shattering.

17 And as I discussed this atmosphere with the people who  
18 worked here, I was told that this was an everyday occurrence,



19 that there was nothing at all unusual about what I was seeing.

20 I happened to be on the Estelle Unit on a day when --

21 or at a time when a man was removed from one of the units for

22 having lacerated his arms and his -- the veins in his ankles.

23 And I watched the staff remove him from his cell, put him on a

24 gurney, and take him out of the unit. And I discussed with the

25 staff how unusual this was. And I was told that it was a more

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